

DECEMBER 1996

HONOR ROLL

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1996 SUBJECT MATTER INDEX

LED EDITOR'S NOTE: This is our annual December LED subject matter index. It covers all LED entries from January 1996 through December 1996. We have also published multi-year, cumulative subject matter indexes on two occasions. In 1989, we published a ten-year subject matter index covering LED's from January 1979 through December 1988. In 1994, we published a five-year subject matter index covering LED's from January 1989 through December 1993. For each of the multi-year indexes, distribution was limited to one per agency due to the size of the index and attendant copying costs. However, the 1989-1993 cumulative index is accessible through the CJTC Computer Bulletin Board, as are our monthly LED's from January 1992 to date. See instructions on Computer Bulletin Board use in CJTC Training Catalogue.

ALZHEIMER'S

Article: "Law Enforcement, Alzheimer's Disease and the Lost Elder" - May '96:18

ARREST, STOP AND FRISK

"Excessive noise" traffic statute upheld; also, frisk upheld. State v. Olsson, 78 Wn. App. 202 (Div. III, 1995) - Jan '96:08

Trespass arrest fails PC test, but drug paraphernalia possession arrest OK. State v. Morgan, 78 Wn. App. 208 (Div. III, 1995) Jan '96:10

Arrest automatically authorized following appellate court mandate terminating review of defendant's conviction. State v. Hunt, 76 Wn. App. 625 (Div. I, 1995) - Jan '96:22

Frisk under Terry v. Ohio must be based on safety concerns; it may not be mere search for evidence. State v. Alcantara, 79 Wn. App. 362 (Div. I, 1995) - Feb '96:11

Man-With-A-Gun stop lawful because alarm for safety of others warranted per RCW 9.41.270; felony stop procedures not an "arrest". State v. Mitchell, 80 Wn. App. 143, (Div. I, 1995) - March '96:09

Grow operation search -- State wins on "pretext", PUD request issues; but State loses on probable cause issue. State v. Rakosky, 79 Wn. App. 229 (Div. III, 1995) March '96:15

No "pretext stop" rule under Fourth Amendment. Whren v. U.S., 135 L.Ed.2d 89 (1996) - Aug '96:09

Facts fail to support defendant's unlawful seizure claim -- no seizure in officer's simple question to parked car occupant: "Where's the pipe?" State v. Thorn, 129 Wn. 2d 347 (1996) - Aug '96:13

Routine warrant check during civil traffic stop OK even if a few minutes delay involved. State v. Rife, 81 Wn. App. 258 (Div. I, 1996) - Aug '96:17

Detainee's apparent nervousness did not justify frisk. State v. Henry, 80 Wn. App. 544 (Div. III, 1996) Aug:19 (see further discussion of Henry in October '96 LED article on pages 19-21).

Custodial arrest for negligent driving upheld on totality test. State v. Nelson, 81 Wn. App. 249 (Div. II, 1996) - Sept '96:06

Checking contents of unoccupied unlawfully parked car during auto prowling investigation not lawful, either as frisk or as search. State v. Ozuna, 80 Wn. App. 684 (Div. III, 1996) - Sept '96:18

Article: "Requesting Consent to Search During a Traffic Stop -- Is It a Seizure?" - Oct: '96:20

Terry seizure supported by reasonable suspicion; consent search OK. State v. Armenta and Cruz, 83 Wn. App. 118 (Div. III, 1996) - Nov '96:05

No pretext stop in warrant arrest; force reasonable. State v. Witherspoon, 82 Wn. App. 634 (Div. III, 1996) - Nov '96:07

"Hot sheet" arrest invalid where sheet should have been corrected. State v. Mance, 82 Wn. App. 539 (Div. II, 1996) - Nov '96:14

Arrest for noncriminal violation of DVPA order may result in civil liability. Jacques, et.al v. Sharp, et.al. and Seattle, 922 P.2d 145 (Div.I, 1996) -Dec '96:19

ASSAULT (Chapter 9A.36 RCW)

Boy's intentional, unlawful touching of girl's breast is assault in the fourth degree. State v. Parker, 81 Wn. App. 731 (Div. III, 1996) - Nov '96:19

Defendants entitled to "no duty to retreat" instruction in street fight assault prosecution. State v. Williams, 81 Wn. App. 738 (Div. I, 1996) - Nov '96:20

ATTEMPT

Attempted rape of a child may be prosecuted despite lack of mental state element in crime. State v. Chhom, 128 Wn.2d 739 (1996) - Aug '96:16

BURGLARY AND TRESPASS (Chapter 9A.52 RCW)

Juvenile guilty of burglarizing father's locked bedroom. State v. Crist, 80 Wn. App. 511 (Div. II, 1996) - Aug '96:21

CIVIL LIABILITY

Defamation verdict for WSP trooper upheld. Richmond v. Thompson, 79 Wn. App. 327 (Div. I, 1995) - March '96:13

Landlord assistance case must go to jury as civil rights action. Kalmas v. Wagner, 82 Wn. App. 105 (Div. II, 1996) - Oct '96:07

Arrest for noncriminal violation of DVPA order may result in civil liability. Jacques, et.al v. Sharp, et.al. and Seattle, 922 P.2d 145 (Div.I, 1996) - Dec '96:20

CORPUS DELICTI RULE

Confessions inadmissible where no corpus delicti for crimes of theft and burglary. State v. DuBois and State v. Bustamonte, 79 Wn. App. 605 (Div. I, 1995) - April '96:19

Corpus delicti for felony murder established without corroboration of underlying felony. State v. Burnette, 78 Wn. App. (Div. I, 1995) - April '96:20

Confessions and admissions not admissible because corpus delicti for manslaughter two not established in "SIDS" death case. State v. Aten, 79 Wn. App. 79 (Div. II, 1995) - April '96:20

CRIME VICTIMS' COMPENSATION

Article: "Crime victims' compensation program alive and well in Washington." - June '96:02

CRIMINAL MISTREATMENT (Chapter 9A.42 RCW)

Fetus not a "child" within meaning of criminal mistreatment statute. State v. Dunn, 82 Wn. App. 122 (Div. III, 1996) - Sept '96:16

CRIMINAL PROSECUTION OF OFFICERS FOR ILLEGAL SEARCHES

Police officer may be criminally prosecuted for (A) alleged bad faith warrantless search, (B) criminal

trespass, (C) official misconduct. State v. Groom, 80 Wn. App. 717 (Div. III, 1996) - Aug '96:19

DOMESTIC VIOLENCE LEGISLATION

1996 Domestic Violence Law Amendments at June LED:12-13

Arrest for noncriminal violation of DVPA order may result in civil liability. Jacques, et.al v. Sharp, et.al. and Seattle, 922 P.2d 145 (Div.I, 1996) - Dec '96:19

DOUBLE JEOPARDY

No violation of double jeopardy, speedy trial, or due process rights where State changed DUI charge to vehicular assault upon learning of extent of victim's injuries. State v. Higley, 78 Wn. App. 172 (Div. II, 1995) - Jan '96:20

UCSA forfeiture of proceeds not subject to double jeopardy restriction; also, PC-to-search and power-records-access issues resolved for State. State v. Cole, 128 Wn.2d 262 (1995) - Feb '96:02

In rem civil forfeitures -- whether based on use of property or on status of property as proceeds -- are not punishment for double jeopardy purposes; such civil forfeitures therefore do not bar criminal prosecution. U.S. v. Ursery, 135 L.Ed.2d 549 (1996) - Aug '96:11

No double jeopardy issue where drug forfeiture not contested. State v. Anderson, 81 Wn. App. 636 (Div. II, 1996) - Sept '96:16

DUE PROCESS

No violation of double jeopardy, speedy trial, or due process rights where State changed DUI charge to vehicular assault upon learning of extent of victim's injuries. State v. Higley, 78 Wn. App. 172 (Div. II, 1995) - Jan '96:20

Fish sting should not have been dismissed on "outrageous government conduct" grounds. State v. Rundquist, 79 Wn. App. 786 (Div. II, 1995) - March '96:18

Destruction of arson evidence by third party does not implicate "due process" protections; but insurance company loses on restitution issue. State v. Martinez, 78 Wn. App. 870 (Div. II, 1995) - April '96:21

ELECTRONIC SURVEILLANCE AND MONITORING (Chapter 9.73 RCW)

Answering phone while executing search warrant does not violate home occupant's statutory (9.73) or constitutional (Art. 1, Sec. 7) rights. State v. Gonzales (Hector), 78 Wn. App. 976 (Div. I, 1995) - Jan '96:22

Citizen's use of scanner on "24-hour-a-day" basis to eavesdrop on drug-growing neighbors' cordless telephone conversations violates RCW 9.73; even results of follow-up investigation by police, exploiting the eavesdropping evidence to obtain a "consent", excluded. State v. Faford, State v. Caskey, 128 Wn.2d 476 (1996) - April '96:02

Sheriff's agreement re task force gives task force authority to electronically intercept throughout county; but non-task force member cannot authorize interception outside employer's territory; other 9.73 issues -- preservation of tape, post-recording review -- also addressed. State v. Knight, 79 Wn. App. 670 (Div. II, 1995) - April '96:07

Failure to name officers participating in agency-authorized recording of drug deal conversations violates RCW 9.73.230, but “good faith” saves evidence. State v. Jimenez, 128 Wn.2d 720 (1996) - May '96:03

Paper for agency-authorized recording of illegal drug conversation per RCW 9.73.230 must specify location of expected recording activity if known. State v. Smith, 80 Wn. App. 535 (Div. I, 1996) - June '96:19

No 9.73 privacy act protection for street drug vendors. State v. Clark, 129 Wn.2d 211 (1996) - July '96:07

Boilerplate re inadequacy of alternative investigative methods in application for court-ordered single-party consent recording criticized. State v. Manning, 81 Wn. App. 714 (Div. I, 1996) - Sept '96:14

Good faith omission of necessary location information in application for agency-authorized tape recording may not require blanket suppression under 9.73 RCW. State v. Tommy Quenton Smith, [unpublished order of State Supreme Court dated July 10, 1996] - Oct '96:03

ENTRAPMENT

Fish sting should not have been dismissed on “outrageous government conduct” grounds. State v. Rundquist, 79 Wn. App. 786 (Div. II, 1995) - March '96:18

EVIDENCE

Trigger for “excited utterance” hearsay rule need not be crime itself. State v. Owens, 78 Wn. App. 897 (Div. I, 1995) - Feb '96:14

“Excited utterance,” “medical diagnosis” hearsay rule exceptions apply. State v. Sims, 77 Wn. App. 236 (Div. I, 1995) - Feb '96:17

Five-year-old found competent to testify. State v. Avila, 78 Wn. App. 731 (Div. I, 1995) - April '96:11

Noncustodial telephone questioning in apparent PC/focus situation does not trigger Miranda; also, defense “authentication” objection rejected. State v. Mahoney, 80 Wn. App. 495 (Div. III, 1996) - May '96:08

Partially fabricated story told in 911 call not an “excited utterance”. State v. Brown, 127 Wn.2d 749 (1995) - Aug '96:15

Statement following lengthy questioning was not an “excited utterance”. State v. Owens, 128 Wn.2d 908 (1996) - Aug '96:16

No unstipulated evidence at trial re polygraph of defendant, even in relation to child hearsay admissibility question. State v. Gregory, 80 Wn. App. 516 (Div. I, 1996) - Aug '96:22

No “excited utterance” where person no longer under stress of statement-triggering event. State v. Sharp, 80 Wn. App. 457 (Div. III, 1996) - Aug '96:22

No in camera hearing to review privileged counseling records unless defendant makes special showing of likely relevance of records. State v. Demel, 81 Wn. App. 464 (Div. I, 1996) - Oct '96:16

Closed circuit TV testimony by distressed child witness OK. State v. Foster, 81 Wn. App. 444 (Div. I, 1996) - Oct '96:16

Child victim hearsay statute requires corroboration of alleged acts where child doesn't testify; issue: what constitutes "testifying"? State v. Rohrich, 82 Wn. App. 674 (Div. III, 1996) - Nov '96:19

EXCLUSIONARY RULE

"Automatic standing" still alive under Washington's exclusionary rule. State v. Carter, 127 Wn.2d 836 (1995) - Jan '96:07

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Evidence sufficient to support conviction under dangerous weapons statute (RCW 9.41.250). State v. Myles, 127 Wn.2d 807 (1995) - Feb '96:10

See Legislative Update, Part I, 1996 Firearms Law Amendments, June LED at pages 14-17; See also Q & A at September LED, pages 20-22.

Juvenile court adjudications were firearms possession disqualifiers under pre-1994 version of RCW 9.41.040. State v. Cheatham, 80 Wn. App. 269 (Div. I, 1996) - Aug '96:20

Seattle ordinance prohibiting the carrying -- concealed or unconcealed -- of dangerous knives held constitutional. City of Seattle v. Montana; City of Seattle v. McCullough, 129 Wn.2d 583 (1996) - Dec '96:17

FORFEITURE LAW (See also "Uniform Controlled Substance Act")

Search warrant needed to authorize delayed investigative search of vehicle seized under drug forfeiture law; also, work release search conditions expire at some point after work releasee arrested for new crime. State v. Hendrickson, 129 Wn.2d 61 (1996) - July '96:11

In rem civil forfeitures -- whether based on use of property or on status of property as proceeds -- are not punishment for double jeopardy purposes; such civil forfeitures therefore do not bar criminal prosecution. U.S. v. Urserly, 135 L.Ed.2d 549 (1996) - Aug '96:11

No constitutional requirement for "innocent owner" protection in forfeiture laws. Bennis v. Michigan, 134 L.Ed.2d 68 (1996) - Aug '96:12

Claimant of property has right to return of property unless: (1) he or she is not rightful owner, (2) the property is contraband, or (3) the property is subject to forfeiture. State v. Angulo, 77 Wn. App. 657 (Div. I, 1995) - Oct '96:19

FORGERY (Chapter 9A.60 RCW)

Fake ID bank withdrawal scheme "forgery", not "money laundering". State v. Aitken, 79 Wn. App. 890 (Div. I, 1995) - April '96:15

FREEDOM OF RELIGION/ESTABLISHMENT OF RELIGION

Chaplaincy program gets First Amendment scrutiny. Maylon v. Pierce County, 79 Wn. App. 452 (Div. II, 1995) - Aug '96:21

FREEDOM OF SPEECH

First Amendment problem for two sections of cable TV act of 1992. Denver Area Ed. Tel. Consortium, Inc. v. FCC, 135 L.Ed.2d 888 (1996) - Sept '96:03

HARASSMENT (Criminal)

Single act of harassment supports conviction under RCW 9A.46.020. State v. Alvarez, 128 Wn.2d 1 (1995) - March '96:08

Harassment law's future injury element requires proof of threat to injure at a different time or place. Seattle v. Allen, 80 Wn. App. 824 (Div. I, 1996) - Sept '96:19

IMPLIED CONSENT, BREATH AND BLOOD TESTS FOR ALCOHOL

Good news, bad news: BAC test does not begin with mouth check, but "right to counsel" rule (CrRLJ) requires early, limited, post-arrest warning. State v. Trevino, 127 Wn.2d 735 (1995) - Jan '96:03

Jailers did not interfere with DUI arrestee's right to additional BAC test. State v. McNichols, 128 Wn.2d 242 (1995) - Feb '96:07

Repair technician on BAC circuit boards need not be certified. State v. McGinty, 80 Wn. App. 157 (Div. I, 1995) - May '96:15

Post-vehicular homicide blood test without advice not admissible; also, urine sample not admissible in evidence because no toxicologist protocol for urine. State v. Anderson, 80 Wn. App. 384 (Div. I, 1996) - July '96:18

Toxicologist's requirement of preservation of blood samples with anticoagulant mandatory. State v. Garrett, 80 Wn. App. 651 (Div. III, 1996) - Aug '96:20

Consent to blood test by vehicular homicide suspect not under arrest invalidated based on lack of prior warnings re right to additional test. State v. Rivard, 80 Wn. App. 633 (Div. III, 1996) - Sept '96:14

INTERROGATIONS AND CONFESSIONS

Good news, bad news: BAC test does not begin with mouth check, but "right to counsel" rule (CrRLJ) requires early, limited post-arrest warning. State v. Trevino, 127 Wn.2d 735 (1995) - Jan '96:03

No Miranda "interrogation" in officer's spontaneous patrol car statement to arrestee. State v. Breedlove, 79 Wn. App. 101 (Div. II, 1995) - April '96:17

Noncustodial telephone questioning in apparent PC/focus situation does not trigger Miranda; also, defense "authentication" objection rejected. State v. Mahoney, 80 Wn. App. 495 (Div. III, 1996) - May '96:08

Violation of Sixth Amendment "initiation of contact" rule requires suppression of statement, even though detective was not aware of defendant's earlier court appearance triggering the Sixth Amendment bar. State v. Valdez, 82 Wn. App. 294 (Div. III, 1996) - Oct '96:04

INTOXICATION DEFENSE (RCW 9A.16.090)

No mental state element for any variation of “rape” offenses; hence, voluntary intoxication no defense to second degree rape charge. State v. Brown, 78 Wn. App. 891 (Div. II, 1995) - April '96:21

JUVENILE JUSTICE

Adult court may not issue arrest warrant for juvenile. State v. Werner, 79 Wn. App. 872 (Div. II, 1995) - April '96:13 LED (Reversed -- see next entry)

Adult division of superior court has authority to issue warrant for juvenile's arrest. State v. Werner, 129 Wn.2d 485 (1996) - Oct '96:04

LABOR LAW

Attorney General opinion: Transfer of sheriff's personnel on forming of new city police department. July '96:21

LANDLORD-TENANT LAW

Landlord assistance case must go to jury as civil rights action. Kalmas v. Wagner, 82 Wn. App. 105 (Div. II, 1996) - Oct '96:07

LEGISLATION

1996 Washington Legislative enactments -- Part One - June '96:02

1996 Washington Legislative enactments -- Part Two - July '96:01

Correction notice re death benefit legislation -- Part Three - July '96:21

1996 Washington Legislative enactments -- Part Three (Subject matter index for parts I, II, and III at pages 8-9) - Aug '96:05

More Q and A on 1996 firearms law amendments - Sept '96:20

LIMITATIONS PERIODS

Securities fraud law interpreted; also, “lulling” rule for fraud limitations period applied. State v. Argo, 81 Wn. App. 552 (Div. I, 1996) - Oct '96:15

Legislation increasing limitations period applies to all prior crimes not yet time-barred. State v. Foster, 81 Wn. App. 508 (Div. I, 1996) - Oct '96:16

MALICIOUS HARASSMENT

Malicious harassment law (RCW 9A.36.080) does not require proof of: (1) “preselection of victim (in anti-bias protected class)”, or (2) bias as “substantial factor” behind prohibited threats or acts. State v. Pollard, 80 Wn. App. 60 (Div. I, 1995) - May '96:13

MALICIOUS MISCHIEF (Chapter 9A. 48 RCW)

Sales tax on repair costs included in determining damages in relation to malicious mischief degree. State v. Gilbert, 79 Wn. App. 383 (Div. III, 1995) - Jan '96:21

MONEY LAUNDERING (Chapter 9A.83 RCW)

Fake ID bank withdrawal scheme "forgery", not "money laundering". State v. Aitken, 79 Wn. App. 890 (Div. I, 1995) - April '96:15

Money laundering evidence sufficient to support conviction. State v. Casey, et.al., 81 Wn. App. 524 (Div. I, 1996) - Oct '96:17

MURDER (Chapter 9A.32. RCW) AND OTHER CRIMINAL HOMICIDES

Washington's assisted suicide statute held unconstitutional in part. Compassion in Dying, et. al. v. State of Washington, et. al., 79 F.3d 790 (9th Cir. 1996) - May '96:17 [NOTE: This case is now before the U.S. Supreme Court]

MUTUAL AID PEACE OFFICER POWERS ACT

Sheriff's agreement re task force gives task force authority to electronically intercept throughout county; but non-task force member cannot authorize interception outside employer's territory; other 9.73 issues -- preservation of tape, post-recording review -- addressed. State v. Knight, 79 Wn. App. 670 (Div. II, 1996) - April '96:07

OBSTRUCTING (RCW 9A.76.020)

Off-duty officers have "public servant" status under former "obstructing" statute. State v. Graham, 80 Wn. App. 137 (Div. I, 1995) - March '96:20

POLYGRAPH

No unstipulated evidence of polygraph of defendant, even in relation to child hearsay admissibility question. State v. Gregory, 80 Wn. App. 516 (Div. I, 1996) - Aug '96:22

PRISONER LITIGATION

Prisoners' injunctive action over law library access lacks merit. Lewis v. Casey, 135 L.Ed.2d 606 (1996) - Sept '96:03

PRIVILEGE

No in camera hearing to review privileged counseling records unless defendant makes special showing of likely relevance of records. State v. Demel, 81 Wn. App. 464 (Div. I, 1996) - Oct '96:16

PUBLIC RECORDS, ACCESS TO COURT RECORDS AND PROCEEDINGS

UCSA forfeiture of proceeds not subject to double jeopardy restriction; also, PC-to-search and power-records-access issues resolved for state. State v. Cole, 128 Wn.2d 262 (1995) - Feb '96:02

Trial court decision to close pretrial suppression hearing must meet specific standards. State v. Bone-Club, 128 Wn.2d 254 (1995) - March '96:08

No closure of juvenile declination hearing without specific finding re right to fair trial. State v.

Loukaitis, 82 Wn. App. 460 (Div. III, 1996) - Nov '96:19

RAPE AND OTHER SEX OFFENSES (Chapter 9A.44 RCW)

No mental state element for any variation of "rape" offenses; hence, voluntary intoxication no defense to second degree rape charge. State v. Brown, 78 Wn. App. 891 (Div. II, 1995) - April '96:21

Attempted rape of a child may be prosecuted despite lack of mental state element in crime. State v. Chhom, 128 Wn.2d 739 (1996) - August '96:16

Officer's firearms imply threat to use them in rape circumstance. State v. Bright, 129 Wn.2d 211 (1996) - Sept '96:03

RENDERING CRIMINAL ASSISTANCE (Chapter 9A.76 RCW)

Corpus delicti rule for rendering criminal assistance addressed. State v. Dodgen, 81 Wn. App. 487 (Div. I, 1996) - Nov '96:16

RESTITUTION

Destruction of arson evidence by third party does not implicate "due process" protections; but insurance company loses on restitution issue. State v. Martinez, 78 Wn. App. 870 (Div. II, 1995) - April '96:21

Restitution to county sheriff's office awarded in killing of police dog. State v. Kisor, 82 Wn. App. 175 (Div. II, 1996) - Sept '96:16

SEARCH AND SEIZURE

Abandoned property

Purse left in store not "abandoned", but search for identification to determine owner OK as community caretaking action. State v. Kealey, 80 Wn. App. 162 (Div. II, 1995) - May '96:05

Anticipatory Warrants

Anticipatory search warrant lawful where affidavit shows "sure course". U.S. v. Ruddell, 71 F.3d 331 (9th Cir. 1995) - May '96:16

Bank Records Search Under Warrant

Execution of warrant for bank records without notice to suspect lawful. State v. Kern, 81 Wn. App. 308 (Div. I, 1996) - Oct '96:12

Consent Search Exception to Warrant Requirement

Consent to blood test by vehicular homicide suspect not under arrest invalidated based on lack of prior warnings re right to additional test. State v. Rivard, 80 Wn. App. 633 (Div. III, 1996) - Sept '96:14

Entry to Arrest -- Payton Rule

Warrantless arrest from public toilet does not violate Payton rule. State v. White, 129 Wn.2d 105 (1996) - July '96:15

Execution: Time Limits on Serving Search Warrant

Execution of warrant for bank records without notice to suspect lawful. State v. Kern, 81 Wn. App. 308 (Div. I, 1996) - Oct '96:12

Exigent Circumstances/Emergency Search/Community Caretaking Function

Purse left in store not "abandoned", but search for identification to determine ownership as community caretaking action OK. State v. Kealey, 80 Wn. App. 162 (Div. II, 1995) - May '96:05

Forfeiture-Related Seizure and Search

Search warrant needed to authorize delayed investigative search of vehicle seized under drug forfeiture law; also, work release search conditions expire at some point after work releasee arrested for new crime. State v. Hendrickson, 129 Wn.2d 61(1996) - July '96:11

Incident to Arrest (Non-vehicle Search)

Officers' testimony re arrestees' apparent levels of intoxication admissible in DUI cases; due process and search incident issues also addressed. State v. Lewellyn, 78 Wn. App. 788 (Div. III, 1995) - August '96:20

Incident to Arrest (Vehicle Search)

Folding down car's back seat does not convert passenger space to "trunk" for purposes of Stroud "search incident to arrest" rule. State v. Davis, 79 Wn. App. 355 (Div. I, 1995) - Feb '96:19

Truck cab's sleeping area within Stroud "search incident" scope. State v. Johnson, 128 Wn.2d 431 (1996) - March '96:06

Engine compartment, like trunk area, off limits under Stroud's search incident rule. State v. Mitzlaff, 80 Wn. App. 184 (Div. II, 1995) - March '96:11

Custodial arrest for negligent driving upheld on totality test. State v. Nelson, 81 Wn. App. 249 (Div. II, 1996) - Sept '96:06

Knock And Announce Rule

No knock and wait required for entry into unoccupied back yard. State v. Schimpf, 82 Wn. App. 61 (Div. III, 1996) - Oct '96:05

Plain View Doctrine/Open View Doctrine

Flashlight-aided look through living room window not a search. State v. Rose, 128 Wn.2d 388 (1996) - March '96:02

Pretext

Grow operation search -- State wins on "pretext", PUD request issues; but State loses on probable

cause issue. State v. Rakosky, 79 Wn. App. 229 (Div. III, 1995) - March '96:15

Privacy Expectations, Scope of Protection

Answering phone while executing search warrant does not violate home occupant's statutory (9.73) or constitutional (Art. 1, Sec. 7) rights. State v. Gonzales (Hector), 78 Wn. App. 976 (Div. I, 1995) - Jan '96:22

UCSA forfeiture of proceeds not subject to double jeopardy restriction; also, PC-to-search and power-records-access issues resolved for State. State v. Cole, 128 Wn.2d 262 (1995) - Feb '96:02

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No 9.73 privacy act protection for street drug vendors. State v. Clark, 129 Wn.2d 211 - July '96:07

No privacy in storage facility records, but warrant to search storage locker fails PC test due to lack of informant veracity showing in affidavit. State v. Duncan, 81 Wn. App. 70 (Div. III, 1996) - Sept '96:11

No right of privacy in store receipts where defendants were being investigated for submitting forged store receipts to insurance company. State v. Farmer, 80 Wn. App. 795 (Div. I, 1996) - Sept '96:17

Article 1, Section 7 of Washington Constitution does not limit private searches. Personal Restraint of Maxfield, 81 Wn. App. 705 (Div. II, 1996) - Nov '96:17

Private Citizen Search

Interception of Federal Express package for drug-sniffing dog's check OK where based on confidential informant's report of "crank" shipment. State v. Jackson, 82 Wn. App. 594 (Div. II, 1996) - Nov '96:02

Article 1, Section 7 of Washington Constitution does not limit private searches. Personal Restraint of Maxfield, 81 Wn. App. 705 (Div. II, 1996) - Nov '96:17

Probable Cause To Search

UCSA forfeiture of proceeds not subject to double jeopardy restriction; also, PC-To-Search and power-records-access issues resolved for State. State v. Cole, 128 Wn.2d 262 (1995) - Feb '96:02

Grow op search -- State wins on "pretext", PUD request issues; but State loses on probable cause issue. State v. Rakosky, 79 Wn. App. 229 (Div. III, 1995) - March '96:15

Officers' odor information in search warrant affidavit establishes PC for "grow" search warrant. State v. Johnson, 79 Wn. App. 776 (Div. II, 1995) - March '96:17

No privacy in storage facility records, but warrant to search storage locker fails PC test due to lack of informant veracity showing in affidavit. State v. Duncan, 81 Wn. App. 70 (Div. III, 1996) - Sept '96:11

Seizing Personal Property On PC While Search Warrant Sought

Interception of Federal Express package for drug-sniffing dog's check OK where based on confidential informant's report of "crank" shipment. State v. Jackson, 82 Wn. App. 594 (Div. II, 1996) - Nov '96:02

Standing to Challenge Search

"Automatic standing" still alive under Washington's exclusionary rule. State v. Carter, 127 Wn.2d 836 (1995) - Jan '96:07

"Automatic standing" issue under state constitution not clarified. State v. Boot, 81 Wn. App. 546 (Div. III, 1996) - Nov '96:09

Work Release Searches

Search warrant needed to authorize delayed investigative search of vehicle seized under drug forfeiture law; also, work release search conditions expire at some point after work releasee arrested for new crime. State v. Hendrickson, 129 Wn.2d 61(1996) - July '96:11

SECURITIES FRAUD

Securities fraud law interpreted; also, "lulling" rule for fraud limitations period applied. State v. Argo, 81 Wn. App. 552 (Div. I, 1996) - Oct '96:15

SELF DEFENSE/DEFENSE OF OTHERS

Defendants entitled to "no duty to retreat" instruction in street fight assault prosecution. State v. Williams, 81 Wn. App. 738 (Div. I, 1996) - Nov '96:20

SENTENCING

Where misdemeanor sentence to run consecutively to felony sentence, misdemeanor time served in county jail. State v. Besio, 80 Wn. App. 426 (Div. I, 1995) - August '96:22

"Three strikes and you're out" law gets constitutional walk. State v. Thorne, State v. Manussier, and State v. Rivers, 129 Wn.2d 736, 129 Wn.2d 652, 129 Wn.2d 697 (1996) - Oct '96:04

SEXUAL EXPLOITATION OF CHILDREN (Chapter 9.68A RCW)

"Sexual exploitation" evidence sufficient because "posing" occurred. State v. Myers, 82 Wn. App. 435 (Div. II, 1995) - Oct '96:14

"Sexual exploitation" crime requires proof of defendant's inducement of minor's sexual conduct: Hidden camera act did not constitute sexual exploitation. State v. Chester, 82 Wn. App. 422 (Div. II, 1996) - Oct '96:15

SIXTH AMENDMENT AND RELATED STATE LAW PROVISIONS (See also "Interrogations and Confessions")

Violation of Sixth Amendment "initiation of contact" rule requires suppression of statement, even though detective was not aware of defendant's earlier court appearance triggering the Sixth Amendment bar. State v. Valdez, 82 Wn. App. 294 (Div. III, 1996) - Oct '96:04

SPEEDY TRIAL

“Speedy trial” clock starts with citation issuance, even if citation not filed. State v. Bonifacio, Wn.2d 482 (1995) - Jan ‘96:07

Striker speedy trial: out-of-state defendant not amenable to process. State v. Stewart, 78 Wn. App. 931 (Div. II, 1995) - Jan ‘96:14

No Striker speedy trial problem where defendant resided in Arizona throughout pertinent time period. State v. Hudson, 79 Wn. App. 193 (Div. I, 1995) - Jan ‘96:17

Striker speedy trial rule: due diligence lacking where defendant moved back and forth between Alaska and known residence in Seattle during pertinent time period. State v. Jones, 79 Wn. App. 7 (Div. I, 1995) - Jan ‘96:17

Striker speedy trial “due diligence” failure where state didn’t follow up on unclaimed certified letter to known or probable addresses. State v. Bazan, 79 Wn. App. 723 (Div. I, 1995) - Jan ‘96:19

No violation of double jeopardy, speedy trial or due process rights where state changed DUI charge to vehicular assault upon learning of extent of victim’s injuries. State v. Higley, 78 Wn. App. 172 (Div. II, 1995) - Jan ‘96:20

Striker speedy trial rule deems out-of-state person not “amenable to process”. State v. Cintron-Cartegena, 79 Wn. App. 600 (Div. I, 1995) - May ‘96:15

Speedy trial: no due diligence problem if address given police is wrong. State v. Vailencour, 81 Wn. App. 372 (Div. I, 1996) - Sept ‘96:09

Striker/Greenwood “speedy trial” rule bars prosecution in welfare theft cases where DSHS, not prosecutor, notified defendants of pending charges. State v. Marler, 80 Wn. App. 765 (Div. III, 1996) - Sept ‘96:19

STALKING (Chapter 9A.46 RCW)

“Follows” defined for purposes of pre-1994 “Stalking” law. State v. Lee, 82 Wn. App. 298 (Div. I, 1996) - Nov ‘96:12

STANDING (See sub-topic under “Search and Seizure” topic)

TAMPERING WITH A WITNESS (RCW 9A.72.120)

Witness tampering evidence sufficient to support conviction. State v. Lubers, 81 Wn. App. 614 (Div. II, 1996) - Oct ‘96:18

THEFT AND RELATED OFFENSES (Chapter 9A.56 RCW) (See also “Robbery”)

Theft law’s aggregation rule for “common scheme or plan” thefts requires prosecution choice -- may only charge either (1) one unified felony or (2) all gross misdemeanors separately. State v. Hoyt, 79 Wn. App. 494 (Div. II, 1995) - Feb ‘96:20

Broken wing window doesn’t establish beyond a reasonable doubt under-age driver’s knowledge vehicle taken without permission -- evidence insufficient to convict. State v. L.A., 82 Wn. App. 275 (Div. I, 1996) - Oct ‘96:10

No theft aggregation for “common scheme” because separate thefts occurred at different times and places with different victims. State v. Atterton, 81 Wn. App. 470 (Div. I, 1996) - Nov ‘96:11

TRAFFIC

“Excessive noise” traffic statute upheld; also, frisk upheld. State v. Olsson, 78 Wn. App. 202 (Div. III, 1995) - Jan ‘96:07

Seattle DUI ordinance with .08 BAC standard invalid. Seattle v. Williams, 128 Wn.2d 341 (1995) - Feb ‘96:11

Bicycling while intoxicated not a crime under title 46 RCW. Montesano v. Wells, 79 Wn. App. 529 (Div. II, 1995) - Feb ‘96:20

License revocation as habitual traffic offender continues after statutory five-year revocation period ends; reinstatement not automatic. State v. Danner, 79 Wn. App. 144 (Div. II, 1995) - March ‘96:14

Injury-accident-hit-and-run statute (RCW 46.52.020) applies even if no MV contact. State v. Hughes (Billy Ray), 80 Wn. App. 196 (Div. III, 1995) - April ‘96:18

Repair technician on BAC circuit boards need not be certified. State v. McGinty, 80 Wn. App. 157 (Div. I, 1995) - May ‘96:15

Trial court should not have dismissed DUI case for insufficient evidence. State v. Wilhelm, Wn. App. 188 (Div. II, 1995) - July ‘96:16

Post-vehicular homicide blood test without advice not admissible; also, urine sample not admissible in evidence because no toxicologist protocol for urine testing. State v. Anderson, 80 Wn. App. 384 (Div. I, 1996) - July ‘96:18

Officers’ testimony re arrestees’ levels of intoxication admissible in DUI cases; due process and search incident issues also addressed. State v. Lewellyn, 78 Wn. App. 788 (Div. III, 1995) - August ‘96:20

UNIFORMED CONTROLLED SUBSTANCE ACT (Chapter 69.50 RCW) AND OTHER DRUG LAWS

Possession of “precursor” chemicals not “Receiving” and not a crime. State v. Bernard, 78 Wn. App. 764 (Div. I, 1995) - Jan ‘96:13

“Intent to deliver” evidence insufficient; State must prove more than possession of marijuana plus multiple baggies plus paraphernalia for use. State v. Davis, 79 Wn. App. 591 (Div. III, 1995) - Feb ‘96:13

“Intent to deliver” evidence sufficient where drug buyer had \$808 cash and no drug use paraphernalia on his person immediately following \$1000 drug buy. State v. Lopez, 79 Wn. App. 755 (Div. III, 1995) - April ‘96:16

Constructive possession of drugs shown by totality of circumstances. State v. Robinson, 79 Wn. App. 386 (Div. I, 1995) - May ‘96:11

Constructive possession standard gets pro-state ruling. State v. Ponce, 79 Wn. App. 651 (Div. III, 1995) - May ‘96:13

YEP program in Seattle is a "school" for purposes of drug act sentence enhancement. State v. Vasquez, 80 Wn. App. 5 (Div. I, 1995) - May '96:15

On-site, sublessor landlord may or may not be liable for subtenant's grow operation. State v. Roberts, 80 Wn. App. 342 (Div. I, 1996) - May '96:15

In rem civil forfeitures -- whether based on use of property or on status of property as proceeds -- are not punishment for double jeopardy purposes; such civil forfeitures therefore do not bar criminal prosecutions. U.S. v. Ursery, 135 L.Ed.2d 549 (1996) - August '96:11

No double jeopardy issue where drug forfeiture not contested. State v. Anderson, 81 Wn. App. 636 (Div. II, 1996) - Sept '96:16

VAGUENESS DOCTRINE

"Excessive noise" traffic statute upheld; also, frisk upheld. State v. Olsson, 78 Wn. App. 202 (Div. III, 1995) - Jan '96:08

Malicious harassment law (RCW 9A.36.080) does not require proof of: (1) "preselection of victim (in anti-bias protected class)", or (2) bias as "substantial factor" behind prohibited threats or acts. State v. Pollard, 80 Wn. App. 60 (Div. I, 1995) - May '96:13

Seattle ordinance prohibiting the carrying -- concealed or unconcealed -- of dangerous knives held constitutional. City of Seattle v. Montana; City of Seattle v. McCullough, 129 Wn.2d 583 (1996) - Dec '96:17

BRIEF NOTE FROM THE WASHINGTON STATE SUPREME COURT

SEATTLE ORDINANCE PROHIBITING THE CARRYING-- CONCEALED OR UNCONCEALED-- OF DANGEROUS KNIVES HELD CONSTITUTIONAL-- In City of Seattle v. Montana; City of Seattle v. McCullough, 129 Wn.2d 583 (1996), the Washington Supreme Court upholds against a multi-faceted constitutional attack a City of Seattle ordinance prohibiting the carrying of dangerous knives. The State Supreme Court leaves to future cases certain questions about the scope of the state constitutional right to bear arms.

The facts and lower court proceedings of the Montana and McCullough cases are summarized by the Supreme Court as follows:

Alberto Montana was arrested for drug traffic loitering, and a paring knife with a three inch blade was found concealed on his person. Henry McCullough was arrested for theft. A knife with a long blade (six to nine inches) used for filleting fish was found in a sheath under his shirt. Both defendants were convicted in Seattle Municipal Court under Seattle Municipal Code (SMC) 12A.14.080, which prohibits carrying a dangerous knife in Seattle. The King County Superior Court ruled SMC 12A.14.080 violated the right to bear arms in article I, section 24 of the Washington Constitution, and reversed the convictions.

The ordinance at issue is summarized by the Supreme Court as follows:

Seattle's Municipal Code contains a comprehensive scheme for regulating weapons generally, and knives in particular. SMC 12A.14. Seattle bans the sale, manufacture, purchase, possession, or carrying of switchblade knives. SMC 12A.14.010E; SMC 12A.14.080A. Seattle makes it unlawful for a person to carry "dangerous knives," whether concealed or unconcealed. SMC 12A.14.080B. "Dangerous knives" are defined as any "fixed-blade knife" or any other knife with a blade more than three and one-half inches in length. SMC 12A.14.010A. A "fixed-blade knife" is further defined as

any knife, regardless of blade length, with a blade which is permanently open and does not fold, retract or slide into the handle of the knife, and includes any dagger, sword, bayonet, bolo knife, hatchet, axe, straight-edged razor, or razor blade not in a package, dispenser or shaving appliance.

Seattle also exempts certain individuals and activities from the regulation of dangerous knives:

A. A licensed hunter or licensed fisherman actively engaged in hunting and fishing activity including education and travel related thereto; or

B. Any person immediately engaged in an activity related to a lawful occupation which commonly requires the use of such knife, provided such knife is carried unconcealed; provided further that a dangerous knife carried openly in a sheath suspended from the waist of the person is not concealed within the meaning of this subsection;

C. Any person carrying such knife in a secure wrapper or in a tool box while traveling from the place of purchase, from or to a place of repair, or from or to such person's home or place of business, or in moving from one (1) place of abode or business to another, or while in such person's place of abode or fixed place of business.

Thus, under Seattle's Municipal Code, a person is banned from carrying, concealed or unconcealed, dangerous knives, although significant exceptions are established for certain recreational, work-related, and personal uses of dangerous knives. Seattle's regulatory scheme, however, does not completely ban the possession of dangerous knives, but instead regulates the possession and carrying of such weapons.

Defendants' appeals raised issues under the state constitution's protections of (1) the right to bear arms and (2) the right, under constitutional due process provisions, against vague laws. The Supreme Court rejects the "right to bear arms" challenge by holding that this constitutional provision is not even implicated by a law against carrying knives not expressly made for fighting purposes, but leaving to future cases the full exploration of the state constitutional right to bear arms (including knives). The Supreme Court holds on the vagueness challenge that the law is sufficiently clear to satisfy due process requirements.

Result: reversal of King County Superior Court ruling that Seattle Municipal Code 12A.14.080 is unconstitutional; reinstatement of Seattle Municipal Court convictions of Alberto Montana and Henry McCullough for carrying dangerous knives.

BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS

ARREST FOR NON-CRIMINAL VIOLATION OF DVPA ORDER MAY RESULT IN CIVIL LIABILITY -- In Jacques v. Sharp and the City of Seattle, 922 P.2d 145 (Div. I, 1996), the Court of Appeals affirms a trial court decision that could subject the City of Seattle to civil liability for an alleged false arrest by Seattle Police Department officers who were attempting to enforce a Domestic Violence Protection Act (DVPA) order.

Mr. Jacques was the subject of an agreed DVPA order directing him, among other things, to stay out of a certain area of Seattle (Magnolia). His ex-wife reported him to be in violation of the order, and, when responding officers found Jacques in Magnolia in violation of the order, they arrested him. Unfortunately for the Seattle Police Department, however, the DVPA does not make criminal the violation of certain elements of DVPA orders, and does not allow for arrest for such violations. The Court of Appeals rules that violation of the order to stay out of Magnolia was not criminal. The Court rules further that, because the arrest was not authorized under the DVPA, SPD is subject to suit on a false arrest theory.

The two key statutes at issue in the Jacques case, as they currently read, are subsections (1), (2), and (3) of RCW 26.50.110, which read:

(1) Whenever an order for protection is granted under this chapter and the respondent or person to be restrained knows of the order, **a violation of the restraint provisions or of a provision excluding the person from a residence, workplace, school, or day care is a gross misdemeanor** except as provided in subsection (4) and (5) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring service, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) **A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, workplace, school, or day care, if the person restrained knows of the order.** Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of established knowledge of the order.

(3) A violation of an order for protection shall also constitute contempt of court, and is subject to the penalties prescribed by law.

...

[Emphasis added]

and RCW 26.50.060(1) which permits a court to order the following types of relief in an order for protection:

(1) Upon notice and after hearing, the court may provide relief as follows:

- (a) Restrain the respondent from committing acts of domestic violence;**
- (b) Exclude the respondent from the dwelling which the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;**
- (c) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;
- (d) Order the respondent to participate in batterers' treatment;
- (e) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;
- (f) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee;
- (g) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or member of the victim's household;**
- (h) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;
- (i) Consider the provisions of RCW 9.41.800;
- (j) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make clear which property is included; and
- (k) Order use of a vehicle.

...

[Emphasis added]

The Court of Appeals rules that arrest is permitted under the above provisions only for violations of orders under subsections (a), (b), and (g) of RCW 26.50.060(2) (see bold print in excerpt above). Other violations are enforceable only under orders of contempt from the Superior Court, the Court of Appeal notes.

Result: King County Superior Court order denying summary judgment to the City of Seattle affirmed; case remanded for trial.

LED EDITOR'S NOTE: This case discusses but does not interpret the mandatory arrest provisions of RCW 10.31.100(2). The latter statute mandates arrest for various DV crimes and certain court order violations. The court order violations for which arrest is mandated under subsection (2) are as follows:

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.01.040, 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW **restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person.**

The kinds of orders referenced in the above excerpt from RCW 10.31.100 are as follows: “No Contact Orders” in proceedings under Domestic Violence Act (RCW 10.99.040, .050); “Restraining Orders” and other orders in proceedings under Child Custody law (RCW 26.10.040, .115); “Restraining Orders” in proceedings under Child Abuse laws (RCW 26.44.063); “Restraining Orders” in proceedings under Uniform Parentage Act (chapter 26.26 RCW); and “Orders for Protection” in proceedings under the Domestic Violence Protection Act (chapter 26.50 RCW).

Note that only with respect to violations of restraining orders issued in relation to child abuse proceedings are officers mandated to arrest for all violations, i.e., regardless of the type of violation. With respect to all other orders referenced in subsection (2) of RCW 10.31.100, arrest is mandatory only if, in the words of subsection (2), the “person has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering a residence, workplace, school or day care.”

In light of the ruling in Jacques, it may be helpful for officers to think in terms of three categories of DV-related court order violations: (I) MANDATORY ARREST VIOLATIONS per RCW 10.31.100(2)(a); (II) DISCRETIONARY ARREST VIOLATIONS, e.g., certain non-threatening, non-violent, contact violations per RCW 26.50.060(1)(g) (see discussion above in Jacques v. Sharp), and (III) NO ARREST VIOLATIONS, per holding in Jacques v. Sharp ...check with your legal advisor.

FEDERAL LEGISLATIVE UPDATE

CONGRESS PROHIBITS GUN DELIVERY TO, RECEIPT BY, PERSONS WITH CONVICTIONS OF "MISDEMEANOR CRIME(S) OF DOMESTIC VIOLENCE"

In legislation which became effective September 30, 1996, the United States Congress has amended Title 18 of the United States Code (U.S.C.) to extend federal firearms laws restrictions to any person convicted in a state or federal court of a "misdemeanor crime of domestic violence."

The federal statutes affected by the referenced amendments include 18 U.S.C., section 922(d) (prohibiting sale or delivery of firearms where, among other things, the recipient is under the disability of a conviction); and 18 U.S.C., section 922(g) (prohibiting shipping, transporting, receiving, or possession of firearms where, among other things, the person is under disability of a conviction). Previously, only convictions of felonies were conviction-based bars under the pertinent federal firearms statutes.

Questions as to the meaning of "misdemeanor crime of domestic violence" and perhaps other questions are now being studied by federal attorneys. As soon as we learn of any interpretations by federal agencies, we will share the information in the LED. Meanwhile, we will state our best guess at this time that, while the federal legislation will apply to all such prior misdemeanor domestic violence convictions (regardless of date of conviction), the provisions of state law regarding restoration of firearms rights will apply.

We also assume for now that Washington State continues to qualify for Brady alternative status. As was noted in the August 1996 LED at page 7, by letter dated June 20, 1996, the ATF's Western District Director, Vicki Rennecker, recognized Washington as a Brady-alternative state when she declared that "[N]o Statement of Intent to Obtain a Handgun (ATF F 5300.35 will be required for the acquisition of a handgun by a holder of a Washington State concealed pistol license which was issued on or after July 1, 1996." Director Rennecker explained further, however, that all persons with Washington CPL's issued before July 1, 1996 will continue to be required to complete ATF F 5300.35 and therefore will continue to be subject to the statutory waiting period.

NEXT MONTH

The January 1997 LED will include an entry on the October 14, 1996 published opinion of Division One of the Court of Appeals in State v. White, __Wn. App.__ (Div. I, 1996) (White holds that the 1980 Washington State Supreme Court decision in State v. Houser, 95 Wn.2d 143 (1980), barring searches of closed containers and locked trunks in vehicle impound-inventories in the absence of a manifest necessity to search, is still good law in this state; White holds further, however, that the Houser impound-inventory restriction on trunk searches does not apply where the vehicle has an automatic trunk-release button in the interior of the vehicle).

The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions express the thinking of the writer and do not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.

